

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

WASEEM DAKER,

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Plaintiff,

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v.

CV 416-158

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SCOTT L. POFF; and

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UNITED STATES OF AMERICA,

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Defendants.

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O R D E R

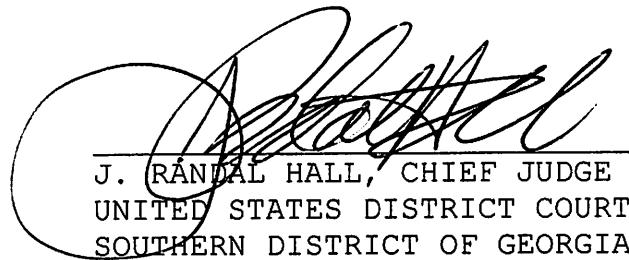
Before the Court is Plaintiff's motion to vacate the Court's Order adopting the Magistrate Judge's Report and Recommendation or, in the alternative, stay these proceedings pending his appeal in Daker v. Bryson, et al., No. 17-14066 (11th Cir. Sep. 6, 2017), and Daker v. Comm'r Ga. Dept. of Corr., et al., No. 14-13257 (11th Cir. Apr. 4, 2014). (Docs. 44, 45, 47.) Because Plaintiff does not satisfy the criteria for relief under Federal Rule Civil Procedure 59(e), his motions are **DENIED**.

Relief under Rule 59(e) is only appropriate when the moving party shows: (1) there has been a change in law; (2) new evidence is available; or (3) reconsideration is necessary to correct a clear error or to prevent manifest injustice. McCoy v. Macon Water Auth., 966 F. Supp. 1209, 1223 (M.D. Ga. 1997).

Plaintiff claims that because two of the cases the Magistrate Judge used in his three-strike analysis were dismissed without prejudice, they are not strikes. See Daker v. Robinson, Case No. 1:12-cv-00118 (N.D. Ga. Sept. 12, 2013); and Daker v. Dawes, 1:12-cv-00119 (N.D. Ga. Sept. 12, 2013). However, as the Magistrate Judge found, a complaint that is dismissed without prejudice can still count as a strike under the PLRA. Rivera v. Allin, 144 F.3d 719, 731 (11th Cir. 1998) abrogated on other grounds by Jones v. Bock, 549 U.S. 199 (2007). Additionally, a case dismissed for the plaintiff's failure to follow court orders is properly considered a strike. Malautea v. Suzuki Motor Co., 987 F.2d 1536, 1544 (11th Cir. 1993). Daker v. Robinson and Daker v. Dawes were dismissed because Plaintiff failed to comply with a court order. See Daker v. Robinson, Case No. 1:12-cv-00118 (N.D. Ga. Sept. 12, 2013); Daker v. Dawes, 1:12-cv-00119, Doc. 3, (N.D. Ga. Sept. 12, 2013). Accordingly, both cases were properly considered in the Court's three-strike analysis.

Therefore, upon due consideration, Plaintiff's motion to vacate the Court's Order or stay these proceedings (docs. 44, 45, 47.) is **DENIED**.

ORDER ENTERED at Augusta, Georgia this 12th day of July,
2018.



J. RANDAL HALL, CHIEF JUDGE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA